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Paper No. 23

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FEB 05 2001

**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Falo et al.
Application No. 09/030,985
Filed: February 26, 1998
Docket No.: 214001-00648

ON PETITION

This is a decision on the petition filed November 15, 2000, under 37 CFR 1.137(b) to revive the above-identified application.

The petition is **granted**.

The belated issue fee and drawings are accepted, such that the application is restored to pending status.

The request for a refund of the petition fee regrettably cannot be favorably considered. The petition fee is due "[o]n filing" the petition, see 35 USC 41(a)(7); MPEP 711.03(c)(III)(B), and, as such, cannot be refunded, even considering the statements given in support of the request for a refund of the petition fee. It is noted that the Examiner's Amendment accompanying the Notice of Allowability of June 6, 2000, indicated that the amendments therein had been mutually agreed to by counsel and the examiner, and specifically advised applicant to seek to remedy any unacceptable changes therein by presentation of an amendment under 37 CFR 1.312 prior to payment of the issue fee, a provision that applicant unfortunately did not attempt, in writing, during the pendency of this application.¹ Further, whilst applicant apparently relied upon verbal representations by the examiner that this application would be withdrawn from issue, or at least retrieved from the Office of Publications, as noted in MPEP 1308: "[u]nless applicant receives a written communication from the Office that the application has been withdrawn from issue, the issue fee must be timely paid to avoid abandonment." Rather, applicant had, in hand, the Notice of Allowance of June 6, 2000 that required timely payment of the issue fee to forestall the abandonment of this application.²

¹ Pursuant to 37 CFR 1.2 all business before the USPTO is to be transacted in writing.

² Even if applicant considered the number of allowed claims indicated in the Notice of Allowance to be in error, as noted in 1056 O.G. 35 (June 12, 1985) reproduced below:

ERRORS IN THE NOTICE OF ALLOWANCE

While the USPTO regrets the circumstances recounted in the petition, should applicant encounter a similar situation in the future, it is suggested that a written request for relief or clarification of the record, or even a petition under 37 CFR 1.313(b) (note that pursuant to 37 CFR 1.181, the mere filing of a petition does not stay any time period that may be running against the application), and any appropriate amendment under 37 CFR 1.312, in compliance with 37 CFR 1.121 be promptly filed, but no later than payment of the issue fee, and copies of the communications also be brought to the attention of the appropriate Group Director, who has the authority to withdraw an application on his or her own volition *prior* to payment of the issue fee.

This application is being forwarded to Technology Center AU 1644 to consider the amendment filed under 37 CFR 1.312 on November 15, 2000.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-1820.



Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

The purpose of this notice is to clarify existing Office practice with respect to providing a new issue fee due date. Sometimes errors appear in the Notice of Allowance, such as an incorrect number of claims, the misspelling of an inventor's name, an incorrect inventorship, or an incorrect title. A duplicate Notice of Allowance correcting the errors may be requested from the Group that mailed the Notice. However, a new issue fee due date will not be provided if the information on the original Notice of Allowance is sufficient to allow a reasonable practitioner to timely file a proper issue fee in the correct application. Specifically, the mere filing of a request for a corrected or duplicate Notice of Allowance will not act to stay the period for paying the issue fee.